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10/086,089	02/28/2002	Scott P. Schreer	3247/NJJ	3357

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EXAMINER

SALCE, JASON P

ART UNIT PAPER NUMBER

2611

DATE MAILED: 12/23/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/086,089

Applicant(s)

SCHREER, SCOTT P.

Examiner

Jason P Salce

Art Unit

2611

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because Figure 5 extends to a second drawing sheet that is not labeled. Figure 5 should be contained in a single drawing sheet or noted as continuation of the flow chart of Figure 5 and labeled accordingly. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claim 1 recites the limitation "said encoded audio signal" in Line 8. There is insufficient antecedent basis for this limitation in the claim. For the remainder of this Office Action, the examiner will interpret this limitation to read, "said encoded signal".

Claim 1 also recites the limitation "in encoded signal monitoring means" in Line 11. There is insufficient antecedent basis for this limitation in the claim. For the remainder of this Office Action, the examiner will interpret this limitation to read, "in the encoded signal".

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA

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1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 1 is provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/736,874. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the instant application contains the additional limitation of a cross phasing means for improving the accuracy of the monitoring means. It would have been obvious to modify claim 1 to include the cross phasing means for the purpose of providing a clean (noise free) signal to be monitored.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 and 5-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginter et al. (U.S. Patent No. 6,253,193) in view of Haggard et al. (U.S. Patent No. 6,148,335).

Ginter discloses embedding an identification code within a digital recording file (see Column 130, Lines 7-11 for "embedded" content in a VDE object (see Column 58, Lines 43-46 and Lines 59-64 for further explanation of an object).

Ginter also discloses transferring said encoded file onto a digital signal compatible medium (see Column 127, Lines 6-8 for transferring the VDE object onto a media).

Ginter also discloses transmitting said encoded file as an encoded signal (see again Column 127, Lines 6-8 for "content delivery" over the media). Also note Column 127, Lines 63-65 for encrypting (encoding) the data in the VDE object.

Ginter also discloses receiving said encoded signal by a suitable digital signal-detecting device (see Column 127, Lines 45-49 for sending the VDE object to an electrical appliance).

Ginter also discloses feeding the received and encoded signal into a monitoring means (see Column 153, Lines 53-59 for storing registration information relating to the VDE data in a secure database 610) that recognizes the identification code, and records and stores the code (see Column 153, Lines 62-64 for storing data from the VDE object 300) and transmission and broadcast related data (see also saving shipping (transmission) and receiving (broadcast) data in tables 444 and 446 in Figure 16) as a

batch file (see Column 153, Lines 64-67 for extracting and storing the VDE data from object 300 into an object registry (batch file)).

Ginter fails to disclose decoding and importing the batch file into a first database that catalogs performance, transmission and broadcast data, and is capable of printing the data. Haggard discloses decoding (collecting the data) and importing the batch file (the data collected) to a first database (see Figure 4 and Column 6, Lines 8-14 for data collection (decoding) and Column 7, Lines 23-25 for importing the data collected by the RCF process to a first database). Note at Column 6, Lines 45-56 describes the data that is collected (and then eventually stored in the database (see above)), therefore this data is "cataloged", where the data contains performance (see Column 6, Line 52 for storing CPU busy ratios), transmission (see Column 6, Line 52 for storing response time data) and broadcast (see Column 6, Line 51 for storing packet error data). Also note at Column 5, Lines 50-55, Haggard discloses a printer 100 that can be used to print the data.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the VDE system, as taught by Ginter, to use the data collection system, as taught by Haggard, for the purpose of presenting performance data for a plurality of servers (in the VDE system of Ginter) running on different platforms or systems (see Column 2, Lines 48-51 of Haggard).

Ginter and Haggard both fail to teach an id code in the form of a non-audible digital signal that is not rendered inoperable by one or more generations of analog taping and broadcast compressions. Levine discloses a data robustness enhancer

1204 (which includes a convolutional encoder 1208), which shifts the watermark data to increase its accuracy for future detection (see Column 17, Lines 16-31).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art, to modify the VDE system with data collection capability, as taught by Ginter and Haggard, using the cross-phasing means (convolutional encoder 1208), for the purpose of increasing the likelihood that the single bit can be retrieved from watermarked audio signal after significant processing is performed upon the watermarked audio signal (see Column 18, Lines 52-55 of Levine).


### ***Conclusion***

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason P Salce whose telephone number is (703) 305-1824. The examiner can normally be reached on M-Th 8am-6pm (every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Faile can be reached on (703) 305-4380. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-5359.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-4700.

December 10, 2003

  
ANDREW FAILE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2600